INDEX.

CITATIONS.

CASES:

MISCELLANEOUS:

IN THE

Supreme Court of the United States

OCTOBER TERM 1948.

No. 332.

THE UNITED STATES, *Petitioner*,

v.

EDMOND PFOTZER and E. JOHN PFOTZER, Co-partners,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Opinion Below.

The opinion of the Court of Claims (R. 46-62) has not yet been reported.

Jurisdiction.

The judgment of the Court of Claims was entered on May 3, 1948 (R. 62). Motion for new trial was denied July 6, 1948 (R. 63). The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

Questions Presented.

1. Where under a standard form of Government contract reserving to the contracting officer the right to determine only disputed questions of fact, no dispute exists as to the contractors' obligation to perform certain work under the contract and no dispute exists as to the manner, adequacy or extent of their performance, does the Government, by virtue of clauses in a technical specification which provide that "the Contractor shall furnish all materials, plant, supplies, equipment, labor, etc., necessary to complete the work according to the true intent and meaning of the drawings and specifications, of which intent and meaning the Contracting Officer shall be the interpreter", which interpretation should be subject to administrative appeal to the head of the department whose decision should be final, possess the right through its administrative officers to declare the law of the contract by determining whether the Government has breached its contract by failing to pay to the contractors the contract consideration for such work admittedly required and performed under the contract.

2. Assuming *arguendo* that it was intended that a decision of the contracting officer and on appeal the decision of the head of the department should be final under Article 15 of the contract and paragraphs 1-07 and 1-08 of the specifications on all questions of interpretation of the specifications and drawings, including one involving the question of payment alone, is such a decision binding in the face of an uncontroverted finding of the Court below that the same was not supported by any substantial evidence or by any provision in the contract documents, and that the fair and reasonable interpretation of the contract required payment.

Contract Provisions Involved.

The pertinent contract provisions appear in an Appendix to the petition (pp. 28-29).

Statement.

Petitioner's statement, pp. 3-10, is inadequate in certain particulars.

1. The last full sentence at p. 4 of petitioner's statement does not adequately recite the provisions of paragraphs 1-07 and 1-08 of the specifications upon which petitioner relies. In lieu thereof respondents submit that the following should be substituted:

> Paragraph 1-07 of the specifications provided that the contractor was to furnish all materials, plant, supplies, equipment, labor, etc. necessary to complete the work within the true intent and meaning of the drawings and specifications, of which intent and meaning the contracting officer would be the interpreter (R. 63-64). Paragraph 1-08 of the specifications provided that if the contractor considered any work demanded of him to be outside of the requirements of the contract, or considered any action or ruling of the contracting officer or of the inspectors to be unfair he should protest in writing to the contracting officer who would render a decision thereon which was appealable within 30 days to the Secretary of War, whose decision should be final.

2. Petitioner's statement, p. 4, is also inadequate in that it fails to relate that the form of contract itself contained limitations upon deviations therefrom, and prohibitions against the adoption of contract provisions inconsistent with the standard form or involving questions of policy. There should therefore be inserted after the last full sentence on p. 4 of the petition the following:

> The present contract which by its 15th Article empowered the contracting officer to decide only "disputes concerning questions of fact" contained on the back of the last page, "Directions for Preparation of Contract" which (a) prohibited deviation from the standard contract form except as authorized by the Director of Procurement; (b) provided that all additions or alterations should be inserted in an article of

the contract entitled "Alterations"; (c) warned that the inclusion of such article entitled "Alterations" should not be construed as general authority to deviate from the standard form; and, (d) prohibited the inclusion in the specifications of any additional provisions inconsistent with the standard form or involving questions of policy (R. 61).

Claim for $3,217.80 for Formed Concrete Beams (R. 33-34; 51-53).

3. Respondents submit that the first sentence in the first full paragraph on p. 6 of the petition is vague and indefinite and in lieu thereof the following should be substituted:

> The beams were shown only on the foundation drawings and the same were not described in the specifications, the only reference thereto being to concrete "beams" or "girders", used in connection with reinforcement (R. 34).

4. Petitioner's statement should also include at p. 7 the following finding of the court below:

> The Court of Claims found as a fact that the fair and reasonable interpretation of the bid form, which was a part of the specifications, including the language of the note on page 3 thereof and the information shown on the contract drawings, was that the contract intended that these formed reinforced concrete beams should be paid for at the unit price bid under item 6 for "Formed concrete foundations" (R. 34). Further, it found that the decisions of the Contracting Officer and the head of the department on this claim were not supported by any substantial evidence or by any provision in the contract documents (R. 34).

Claim for $2,018 for Excavation and Concrete Floor Slabs for Wash Racks (R. 34-35; 53-54).

5. Petitioner's statement of the facts relating to this claim (R. 7-9), is inadequate, ignores the fact that the slabs in question rested on gravel which is highly determinative

of the question whether respondents should be paid therefor, and by only passing reference to a "Note" on the Bid Form completely de-emphasizes the importance of that note to the controversy here involved. An adequate presentation of these facts necessitates a complete restatement as follows:

The Bid Form which was a part of the contract called for two automobile wash racks (R. 28, Item 33; R. 34).

Construction of these wash racks necessitated the excavation of 109 cubic yards of earth (R. 34); the placement of gravel in such excavated area (R. 35), and the placement on top of such gravel of concrete floor slabs comprising 60 cubic yards of concrete (R. 35). The original plans had shown such concrete floor slabs resting directly upon the earth, but petitioner subsequently ordered and separately paid for the placing of the gravel on which the concrete slabs were laid (R. 35). The wash racks also required among other things plumbing, water pipes and connections, fixtures and drains (R. 35).

Item 2 of the Bid Form provided a price of $2 per cubic yard for "Excavation for * * * floor slabs" (R. 27).

Item 6 of the Bid Form provided a price of $30 per cubic yard for "*Concrete* * * * for floor slabs" (R. 27). The specifications provided that "Concrete * * * shall be paid for as set up in the Bid Form" (R. 35).

The Bid Form also contained a "Note" following Bid Item 6 referred to above which provided that the "Unit price for each of the buildings listed hereinafter shall include all work, materials, labor and incidentals required to construct them complete * * * except * * * floor slabs on earth or gravel" (R. 27).

Immediately after the note was the caption "Structures", and under that caption appeared Bid Item 33, which provided a lump sum price of $1200 for "Wash Rack, Mod. (25′ x 60′) (5-Car) (Excluding Booster Pump and connections)", the quantity called for being two (R. 27-28).

The Bid Form was made a part of the contract by Article 1 of the contract (R. 30-31; R. 50-51).

In making their bid for wash racks respondents did not include in their unit price for such wash racks, Bid Item 33, any of the cost of the excavation or concrete (R. 35; R. 54).

Respondents sought payment for such excavation and concrete under Bid Items 2 and 6 referred to above (R. 35).

The contracting officer disallowed their claim stating "It is the interpretation of this office that the wash racks are to be paid for at the unit price stated in Item No. 33, complete in place, excluding booster pump and connections", and on plaintiff's appeal the disallowance was affirmed (R. 35).

Such administrative decisions were contrary to the provisions contained in the Bid Form (R. 35), and clearly erroneous (R. 54).

The provisions in the Bid Form were the only provisions contained in the contract or specifications relating to the wash racks (R. 35).

The wash racks were shown on a drawing which is not in evidence[1] (R. 53).

There is nothing in the record to support petitioner's assertion (pp. 8-9) that this drawing was "considered of prime significance by petitioner's administrative officers in their disallowance of the claim," there being no question at any time of respondents' obligation to perform the exact work set forth in that drawing.[2]

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[1] Respondents did not introduce this drawing because it did no more than outline the work to be performed, and no controversy existed as to either respondents' obligation to perform such work or the fact that it was performed, the only issue in the case being one of payment for work admittedly required under the contract. That petitioner's view was the same is evidenced by the fact that it likewise did not offer this drawing in evidence.

[2] It is noted that petitioner cites nothing in support of its statement that such drawing was of "prime significance" to the administrative officers who disallowed the claim. In footnote 7 on p. 8 in support of another point, petitioner refers to the administrative disallowance (1 Contract Cases Federal, Commerce Clearing House, 230, 238, 239), an examination of which shows that the only significance attached to the drawing by the War Department Board of Contract Appeals was their conclusion that such drawing

6. The full paragraph on p. 9 of the petition does not adequately or fairly summarize the general portion of the opinion of the Court below (R. 59-62). In lieu thereof the following should be substituted:

> The Court below held (1) that Article 15 of the contract was intended to limit administrative decisions to questions of fact (R. 60); (2) that the specifications only related and were intended to relate to the furnishing by the contractor of materials, plant, supplies, equipment, labor, etc., necessary to complete the work in accordance with the drawings and specifications (R. 61-62), and (3) that the specifications did not purport to make final and conclusive the contracting officer's interpretation of the plans and specifications with reference to amounts due (R. 62).
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> In arriving at these conclusions the Court below stated that Article 15, which limited the authority of administrative officers to the determination of disputed questions of fact, laid down a rule of policy (R. 60) and that only in Article 23 ("Alterations") might the Government, acting through the contracting agency or the head of the department, insert modifications or changes of that policy (R. 60-61).
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> It also pointed out that the directions for the preparation of the contract, as they appear on the contract form, prohibit the insertion of provisions in the specifications which deviated from the policies defined by the contract (R. 61). The reasoning of the Court clearly indicates that it found no inconsistency between the provisions of Article 15 and the provisions of the specifications. It was aided in this conclusion by the fact that the language of the specifications clearly showed that the power of administrative decision in the specifications was restricted to questions involving materials, plant, supplies, equipment, labor, etc., necessary to complete the work in accordance with the draw-

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showed "that the principal work to be performed was the concrete work and incidental excavation," patently not pertinent to the question whether Bid Items 2 and 6, specifically relating to Excavation and Concrete, provided for payment for such work.

ings and specifications (R. 61-62). It was further aided in this conclusion by the fact that Article 23 of the contract contained nothing indicating an intention on the part of the Government to change the policy stated in Article 15 of the contract (R. 60). It concluded that the power to declare the law of the contract remained in the Courts (R. 62).

Reasons for Denying the Writ.

1. The decision of the Court below is not of sufficient importance to justify the granting of the writ. The case involves only the legal determination of the right to be paid under the terms of the contract for work admittedly required to be performed under the drawings and specifications. No technical questions of compliance or non-compliance with the specifications and drawings have ever arisen. The merit of the claims is manifest and it is not disputed that the contract required the payments claimed by the respondents.[3]

Admittedly the work was called for by the original contract and no dispute has ever arisen that the performance of such work was in the nature of an extra or change, or that respondents in the performance of such work did anything less than what the specifications or drawings called for. Respondents know of no case, and petitioner has cited none, where any court has been presented with a similar

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[3] Petitioner in its brief has not challenged the finding of the court below with respect to the claim for concrete foundation beams that the "fair and reasonable interpretation" of the Bid Form required payment (R. 34, Finding 14) and that the decisions of the contracting officer and head of the department disallowing such payment were not supported by any substantial evidence or by any provision in the contract documents (R. 34). With respect to the wash racks petitioner also fails to dispute the finding that the disallowance was "contrary to the provisions contained in the Bid Form which constituted a part of the contract specifications" (R. 35), and that "The provisions in the Bid Form were the only provisions contained in the contract or specifications relating to the wash racks" (R. 35).

question, all of the cases cited by petitioner turning instead upon the question whether work was required of a contractor under the terms of the contract.[4] It is therefore obvious that the question here involved is not one which will frequently occur, will in no wise hamper the administration of Government contracts, and is not of sufficient moment to justify the granting of the writ.

2. The case was correctly decided by the court below.

(a) The Court of Claims has not "once again refused to apply the established provisions of government construction contracts, long accepted by contractors, which designate certain contractual disputes for administrative settlement", as stated by petitioner (p. 11), nor has it "ignored the traditional clause providing for administrative interpretation * * * used for years in thousands of contracts and often applied by the courts" as stated by petitioner (p. 12). Such reckless statements would indicate that the Court of Claims is comprised of a group of judges whose primary concern is to avoid long established safeguards to the expenditures of Government funds under public contracts. Nothing could be further from the case. Instead, that Court has consistently enforced provisions of Government contracts similar to those involved in paragraphs 1-07 and 1-08 of the specifications in this case, without, however, relinquishing to the Government's administrative officers the Court's jurisdictional right to determine the laws of such contract.

There are acceptable reasons why various phases of Government contract administration should be settled with finality by Government officers. There should never be a question regarding the Government's right to order additional work and it is not unreasonable to place in the hands of an administrative officer the authority to finally determine what an equitable adjustment for such work should be. It is not unreasonable that Government officers should

[4] An analysis of this Court's decisions appears *infra*, pp. 12-14.

also have the authority to determine whether work is required by the specifications and drawings and whether work so performed meets the requirements of the specifications and drawings. One justification for giving such an administrative officer authority to make such determinations, subject to an appeal to the head of the department, is that these questions involve technical knowledge which is more apt to be possessed by a technical man than by the courts. A second justification is that the power of administrative decision can be used to settle disputes during the performance of the work and thereby operate to prevent a course of conduct which might ultimately result in large claims for damages against the Government.[5]

None of the above reasons would justify the finality of a decision by the contracting officer on the question presented by this case for here there are no technical questions involving an interpretation of the work requirements of the specifications and drawings. The only question here presented is whether the language which the Government saw fit to employ in the preparation of this contract created a legal obligation to pay for the work. An engineer or an administrative officer has no background of experience or training which would render him fit to make this determination. Neither is it desirable, nor can it be said that the parties contemplated that they entrusted to an employee of one of the parties the right to determine finally the legal obligations arising under the contract and thereby deprive the Court of Claims of its jurisdiction. If any such radical departure from the standard form of Government contract had been intended it would have been made apparent by a revision of Article 15 and would not have been buried in a technical specification in such language as would clearly indicate that the power of decision was intended to be restricted to questions involving the furnishing of ma-

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[5] *United States* v. *Blair*, 321 U. S. 730, 735; *United States* v. *Holpuch Co.*, 328 U. S. 234, 239.

terials, plant, supplies, equipment, labor, etc., necessary to complete the work.

The other reason for permitting an employee of one of the parties to have final decision on such questions is likewise not present in this case. Here, there is no question of permitting a higher Government official to correct the rulings of a subordinate and thus mitigate or avoid the damages flowing from an incorrect ruling upon the part of the subordinate. Here, the only question is whether or not the contractor shall receive any payment for a substantial quantity of work that he performed which all parties admit was and necessarily had to be performed under the specifications and drawings.

It would be fundamentally wrong to place all powers of decision, factual and legal, in the hands of one of the interested parties to the contract and the undesirability of such a condition has been recognized by the Government itself. From 1933 to 1940, while the Government was lending support to the economy of the country through the letting of contracts by the Public Works Administration, that Administration modified Article 15 of the contract from one authorizing the head of the department to finally decide only disputed *questions of fact* to one authorizing such officer to finally decide "all" disputes arising under the contract.[6] However, the obvious inequity of such a provision was soon realized by the Government and a return was made to the earlier Article 15 which reserved the power of final decision only on disputed questions of fact. The foregoing history demonstrates that the policy makers of the Government have foreseen the shortsightedness of any attempt to deprive competitive contractors of their right to seek redress in the courts for failure of the Government to abide by the obligations of its written contracts. Were the Government permitted to be the final judge of the extent of its legal obligations, there could be no firm commitment

[6] See explanatory remarks under fn. 15, p. 17 of petition.

by the Government for performance of its obligation to pay for work and the many advantages that have flowed to the Government through competitive bidding would cease.

The present case involves a provision in the specifications vesting in the contracting officer authority to interpret the plans and specifications. The Court of Claims has long recognized and enforced provisions of this nature and has held that the decision of the contracting officer, subject to appeal, was final on the question whether work or material was required by the drawings and specifications. *Union Paving Co.* v. *United States,* 107 C. Cls. 405, 417; *McCloskey & Co.* v. *United States,* 103 C. Cls. 253, 264, 265; *Langevin* v. *United States,* 100 C. Cls. 15, 40, 41; *King* v. *United States,* 100 C. Cls. 475, 482, 490.

The present petition is simply an attempt to enlarge this power of decision beyond the scope of the contract itself and beyond any excusable need for a power of decision at an administrative level and, in the last analysis, petitioner seeks to confer upon itself the power to finally decide whether or not it has performed its own contract obligation to pay for work admittedly required by the contract.

(b) The decision of the court below is not in conflict with any decision of this Court. An examination of the decisions of this Court will reveal that the court below in declaring that a legal obligation existed to pay for work admittedly required and performed in accordance with the specifications did not contravene any principles that this Court has laid down in recent years in the law of Government contracts.

In *Plumley* v. *United States,* 226 U. S. 545, 546, 547, a construction contract was terminated and thereafter the Government entered into another contract with Plumley to complete the work. Disputes arose as to whether a ventilator system and certain drain pipes were required under Plumley's contract. Plumley's claim was rejected by the architect and on appeal by the Secretary. The Court held that the decision of the Secretary was binding on the con-

tractor because the contract provided that if there was any discrepancy between the plans and specifications or between the first contract and that of Plumley, Plumley would have to abide by the decision of the Secretary. In this case the question presented was whether the work was required, and the interpretation of the administrative officer was upheld.

In *Merrill-Ruckgaber Co.* v. *United States,* 241 U. S. 387, 393, a dispute arose as to whether the specifications required the contractor to underpin one building or two buildings. The Supervising Architect ruled that the contractor had to underpin both buildings. The Court held that his decision was final under a provision authorizing him to finally interpret the drawings and specifications. Here again the question involved was whether the work was required by the drawings and specifications.

In *John McShain, Inc.* v. *United States,* 308 U. S. 512, 513, 520, reversing 88 C. Cls. 284, a dispute existed as to whether the plans and specifications required certain drains to be backfilled with gravel. The Government engineer contended that the gravel was required even though there was a discrepancy between the specifications and the plans (88 C. Cls. 289, Fdg. 7). Although the decisions of the court below and of this Court do not clearly indicate that this contract contained the "all" disputes clause as distinguished from the "disputed questions of fact" clause, the fact was that it contained the "all" disputes clause and the petitioner admits this in footnote 21, p. 22 of the petition in the present case. By *per curiam* opinion citing *Plumley* v. *United States,* 226 U. S. 545, 547, and *Merrill-Ruckgaber Co.* v. *United States,* 241 U. S. 387, 393, this Court reversed the decision of the court below. As in the other cases this decision turned upon the requirements of the specifications and drawings further complicated by discrepancies between the plans and specifications.

In *United States* v. *Beuttas,* 324 U. S. 768, 771-772, the contract contained an "all" disputes clause. The question

arose whether the contractor could recover certain increases in wages which he had to pay because the Government had required a higher minimum rate to be paid under another contract on the same project. The contractor's claim was administratively disallowed. The contractor contended before this Court that the "all" disputes clause could not encompass such a situation since the question presented was purely a matter of law. This Court ruled that it was not necessary to pass upon this point and denied recovery for another reason. There is no analogy between the *Beuttas* case and the present one as far as the contract provisions are concerned, though the *Beuttas* case indicates that even where a broader Article 15 is present authorizing final decision of all disputes, this Court was unwilling to recognize that administrative officers could be given the right of final decision on purely legal questions.

From the above cases it is clear that the decision of the court below is not in conflict with the decisions of this Court since it does not involve the technical question whether work was required by the plans and specifications, which question was present in each of the decisions referred to above.

(c) Assuming *arguendo* that it was intended that petitioner's administrative officers might finally determine under the provisions of the specifications in question whether petitioner had fulfilled its legal obligation under the contract to pay for work admittedly required and performed, and that such provision would be valid, such a decision cannot be final in view of the finding of the court below with respect to the claim for concrete beams that the fair and reasonable interpretation of the specifications is that payment should be made at the contract unit price for concrete, and that the administrative decisions denying payment were not supported by any substantial evidence or by any provision of the contract documents (R. 34) and in view of the finding of the court below, with respect to the claim for wash racks, that the administrative decisions

denying payment were contrary to the only provision of the contract or specifications relating to wash racks (R. 35), none of which findings petitioner has challenged.

This Court has laid down the rule that the decision of a contracting officer cannot be final where there is fraud, a failure to exercise an honest judgment, or if it is so grossly erroneous as to imply bad faith. *Kihlberg* v. *United States*, 97 U. S. 398, 402; *Martinsburg & Potomac R. R. Co.* v. *March*, 114 U. S. 549, 553; *United States* v. *Gleason*, 175 U. S. 588, 607. In establishing this rule, however, it is clear that this Court was fully aware of the difficulties of proving bad faith and wished it to be well understood that it could be inferred from the grossly erroneous character of the decision itself. Later cases elaborated on this ground and referred to the objective standard of reasonableness. For example, in *Ripley* v. *United States*, 223 U. S. 695, 701-702, the Court after stating the above rule, said:

> "But the very extent of the power and the conclusive character of his decision raised a corresponding duty that the agent's judgment should be exercised—not capriciously or fraudulently, but *reasonably and with due regard to the rights of both the contracting parties.* * * *." (Italics supplied.)

In *Saalfield* v. *United States*, 246 U. S. 610, 613, where a contract for the manufacture of guns provided for certain tests and for the determination of disputes by the Chief of Ordnance subject to the final decision of the Secretary of War, this Court held:

> "* * * It is apparent from these excerpts that the contract contemplates the making and testing of a 'type gun' of each caliber; that the acceptance of additional guns was dependent on this one 'passing its test satisfactorily,' and that the Chief of Ordnance and his superior officer, the Secretary of War, were to decide, not arbitrarily, but candidly and *reasonably*, whether the gun had satisfied the required test. *Ripley* v. *United States*, 223 U. S. 695, 701-702." (Italics supplied.)

Thus it is clear that this Court recognizes an objective standard for determining bad faith and permits it to be inferred from the decision itself. It is also clear that the decision of an administrative official cannot be final where he fails to act reasonably, and with due regard to the rights of both of the contracting parties.

Certainly the administrative officers in this case cannot be said to have acted reasonably or with due regard to the rights of both parties in disallowing the claim for concrete beams when, as found by the court below, the fair and reasonable interpretation of the specifications called for payment at the contract unit price for concrete, and that the administrative decisions denying payment were not supported by any substantial evidence or by any provision of the contract documents (R. 34). In the light of the *Ripley* and *Saalfield* cases, *supra*, this is the equivalent of finding that the decisions of these administrative officials were so grossly erroneous as to imply bad faith. It is submitted that in cases involving the finality of a decision of an officer under a Government contract, as in cases involving the finality of the findings of quasi-judicial fact-finders, the courts are not bound by decisions which are not supported by substantial evidence and that the courts should not be required to indulge in name-calling in order to exercise the right of review (see concurring opinion of Judge Madden in *Bein, et al.* v. *United States*, 101 C. Cls. 144, 168-169).

Regarding the disallowance of the claim for wash racks, it is likewise submitted that the decisions of the administrative officers in this case cannot be final where, as found by the court below (R. 35), these decisions were contrary to the only provisions of the contract and specifications relating to wash racks.

3. The reasons stated by petitioner for granting the writ are based upon an erroneous interpretation of the opinion of the court below.

Petitioner contends (pp. 16-24) that the court below erred in holding that the contracting officer had no authority to in-

corporate the disputed clauses of the specifications in the contract. Its entire argument under this point is based upon the fallacious assumption that the court below held the contracting officer had no authority to incorporate such provisions of the specification of the contract. As stated, *supra* (pp. 7-8) what the court below actually held was that the specifications were only intended to relate to the furnishing by the contractor of materials, plant, supplies, equipment, labor, etc., necessary to complete the work in accordance with the drawings and specifications, and did not purport to make final and conclusive the contracting officer's interpretation of the plans and specifications with reference to amounts due. Thus it is clear from the Court's opinion that it did not consider the specifications to be a deviation from the policy prescribed by the standard form of contract or that the contracting officer had no authority to incorporate these provisions of the specifications. Further, the cases cited *supra*, p. 12, show that the court below has consistently observed and enforced specification provisions similar to those here involved.

Another reason urged by petitioner for granting the writ (pp. 12-16) is that a contractor would have no standing to challenge the disputed provisions of the specifications even if the contracting officer were without authority to include the disputed provisions in the specifications. This reason, like the one before, disregards the fact that the court below actually upheld the validity of the provision of the specifications in question, interpreting it as giving the contracting officer authority to decide whether or not the contractor had furnished materials, plant, supplies, equipment, labor, etc., necessary to complete the work in accordance with the drawings and specifications. The court below did not hold that the contracting officer was without authority to include this provision in the specifications. Thus there is no occasion to pass upon the question whether or not the contractor would have any standing to challenge the validity of the clause.

Petitioner's third reason (pp. 24-26) for granting the writ is that the court below ignored paragraph 1-07 of the specifications and held that the clause was not designed to apply to matters of amounts due, and in support of this reason petitioner cites several decisions of this Court and of the Court of Claims for the proposition that these courts have always accepted clauses of this type in cases directly involving questions of contract price or amounts due. Here again, petitioner's argument is based upon the fallacious assumption that the Court of Claims ignored paragraph 1-07 of the specifications. Moreover, the cases cited by petitioner (pp. 25-26) do not, as petitioner would imply, involve a situation like the present one where the work was admittedly required by the specifications and drawings and was admittedly performed in accordance therewith, thus leaving for administrative determination only the question whether the Government had breached its obligation to pay for such work in accordance with the terms of the contract.

In none of the cases cited by petitioner was the issue restricted to the single question of whether the contractor should be paid for work that was admittedly required by the contract. Each involved an interpretation of the work requirements of the specifications and drawings, which in the words of petitioner would call for the exercise of "expertise" in such technical matters.

4. The decision of the Court of Claims will not, as petitioner urges (pp. 26-27) operate to deprive the Government "of the benefits of the administrative machinery it has created to adjudicate disputes and to avoid large damage claims." As previously pointed out this and other decisions of the Court below do not reject but recognize the justification for leaving to technical men the final determination of the question whether work or materials in a particular instance are required by the plans and specifications. Likewise, it has been demonstrated that the decision of the court below will not interfere with the administrative machinery

set up for the purpose of affording an opportunity to correct errors of subordinate administrative officials and thus mitigate or avoid large damage claims based upon such errors. Moreover, to seek to extend the scope of administrative determination, as petitioner urges, would in the long run operate to the Government's disadvantage. To permit administrative officials of one of the contracting parties to finally decide the extent of its obligation to pay for work admittedly required under the contract would render so uncertain the Government's obligation to pay that the benefit which the Government now derives from competitive bidding would be destroyed or at least seriously impaired.

Conclusion.

For the reasons stated it is respectfully submitted that this petition should be denied.

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